1957 File No. Fees II Dwr 51

Legal Deptt
C Branch

Examined.

Subject:

Application for
enhanced fees from D.G.P;
P.P. + their Assistants
from Dharwar Distt.

P. 18
(2)

Fees II Dharwar | 51

531-C

C O N T E N T S.

Legal Department.

Vol. Fees. II Dwr/51.

Sr.No.	Compilation No.	Subject.	Pages.
	Fees. II Dwr/51.	Applications for enhanced fees from D.G.P. P.P. and their Assistants from Dharwar District.	
1.	G.R.L.D. No.7086 4-5-51.	Enhanced Fees - Payment of - to Shri S.S. Malimath, Public Prosecutor, Dharwar.	9-10.
2.	L.D.R.P No. 22450 1.11.51.	Letter from P.P. Dharwar, Re- special fees in Criminal Case No. 166/49 in the Court of the Resident Magistrate, First Class, Dharwar.	11-16

24/4/17

C O N T E N T S.

Legal Department.

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VR 24/11/17

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24/12/52

No. 68-A dated 18 Jan '51,
Office of the Public Prosecutor,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Sir,

In the Criminal Case No.106 of 1950 in the Court of the Resident Magistrate, E.C., Dharwar, the undersigned humbly applies for a special remuneration as provided by Rule No.26 of the Law Officers' Rules.

In this case the charge-sheet was sent up by the P.S.I., Hubli, before the Sub Divisional Magistrate Hubli. As the District Magistrate of Dharwar found that the case was of special importance, he directed the Public Prosecutor, Dharwar, by his No.M.A.G.C.R. 100 dated 3-7-1949 to undertake the conduct of the case. As it was a very sensational case he also transferred it to the file of the Additional District Magistrate, Dharwar. Thereupon one of the accused approached the High Court and succeeding in getting it transferred to the Court of the Resident Magistrate, E.C., Dharwar, where it came to be heard.

The offence was in respect of illegal possession of 28 bags of paddy against the three accused contrary to the provisions of the Essential Articles Acquisition and Possession Order, 1943, punishable under the Essential Supplies (Temporary Powers) Act, 1946. The case was of an unusually complicated nature requiring special and heavy exertions.

The following facts bear ample testimony to the enormity of the case and of the task that lay before the Public Prosecutor in the conduct of it.

The charge-sheet was sent up on 24-6-1949. The hearing before the R.M.F.C., Dharwar started on 21-2-50 and occupied full 10 months, with 33 days being taken up for actually recording evidence. Out of 27 witnesses cited for the prosecution 24 were examined and 2 more were examined for the defence. The record of the depositions runs over 223 pages. As many as 40 documents have been exhibited of which about 12 are Registers or big books of accounts, each running over several pages.

The arguments in case were heard on 7 days (including a Sunday) occupying nearly 20 hours. The ultimate judgment of the Magistrate, covers 84 typed pages.

There were three accused in the case and each of one of them had engaged three distinguished and renowned lawyers from three different Districts, apart from a dozen other junior lawyers to assist them. Accused No.3 had briefed Shri. A.C. Angadi, Exh-Public Prosecutor, Bijapur. He was paid at the rate of Rs.300/- per day. On behalf of accused No.2, appeared Shri.Mujumdar, Exh-Public Prosecutor, Belgaum. He was paid at the rate of Rs.200/- per day. Accused No.1 was represented by Shri.V.C.Giriyappanavar and Shri.S.K.Joshi, two of the leading Criminal Lawyers of Dharwar. They are said to have charged a sum of Rs. 2000/- for the case.

The undersigned was matched against such a panel of legal luminaries. He submits that he has done his humble might in the conduct of the case. In view of the foregoing the undersigned claims that he should be paid at the rate of Rs.150/- per day.

In the course of his judgment (a copy of which is herewith attached) the learned Magistrate has given his findings in favour of the prosecution on all issues of Fact. The illegal possession of 28 bags of paddy

3 7

by the three accused has been held as proved. Still the learned Magistrate has chosen to acquit them on the mere ground that no "Mens rea" exists for that possession. A seperate reference is being made for filing an appeal under section 417 Cr.P.Code.

It is submitted that the result of the case is not the main point for consideration in the matter of awarding special fees. The complicated nature of the case and the amount of labour involved, the industry and ability displayed are the most important considerations.

One thing more needs to be mentioned. It relates to a contention taken by Shri. A.C. Angadi of Bijapur that the case is vitiated for mis-joinder of accused contrary to section 239 of Criminal Procedure Code Scores of rulings were cited on either side, and the matter was thoroughly thrashed out for several hours. But there is no reference to the same in the judgment possibly because the learned Magistrate ultimately accepted the points of xxview put forth by the undersigned and held that the trial was correct.

In view of the foregoing it is prayed that a special fees at Rs.150/-, per day may please be sanctioned to the undersigned for this case.

Yours faithfully,

Public Prosecutor.

Enclosures :-
1. Copy of judgment.
2. Attendance certificate.

(P.T.O.....

Submitted through the Resident Magistrate, T.C., Dharwar, and District Magistrate, Dharwar.

Forwarded with compliments to the R.L.A., Bombay through the D.M., Dharwar.

The case is fully a bailable one. And compensation can. All the accused persons are present in the application are present and true. As far as the bonds are sufficiently furnished by the learned Public Prosecutor, I would hardly stress it. The judgment accompanying the case the offences are mostly bailable one. I endorse the learned Public Prosecutor's note in the application and I recommend special sanction in the case,

Addl. A.S.P. & Asstt.
18-1-1951

5 Legal dept H

Submits

for the reasons stated in his letter at pages. 1-3 anti the P. P. Dharwar requests that he may be sanctioned the rate of enhanced fees at Rs 150/- per day for 28 days for conducting cr case No. 166 of 1949 (State of Bijay Vs J. S. Sawanur and two others).

2. The R.M. f.c: Dharwar before whom the case was conducted supports the request of the P. P. In view of the importance of the case and in view of the remarks of the trial magistrate that marked industry has been displayed by the P.P. in conducting the case, the D.M. recommends that enhanced fees of the

rate, i.e. Rs 50/- per day may be sanctioned to the P.P.

3. Under rule 23 of the L.O. (C.P.S) Rules the P.P. is entitled only to a fee of Rs 20/- per day. The P.P's request will have therefore to be dealt with under rule 26 of the L.O.(C.P.S) Rules. A D's sanction is necessary ~~if~~ for the grant of enhanced fees.

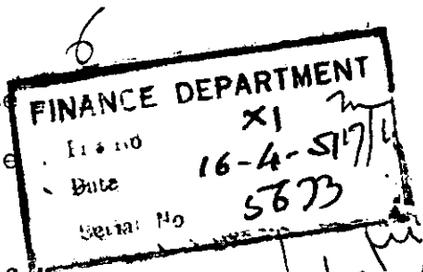
11/4

S.S. 11/4

SAS.

The demand made by the P.P. ,Dharwar, for payment of enhanced fees at the rate Rs. 150/- per day appears to be very exhorbitant. In view of the certificate given by the Trying Magistrate and the D.M., Dharwar, it would be quite fair if the P.P. is paid at the rate of Rs. 40/- per day, that is, at double the usual rate of fees of Rs. 20/- per day.

F.D's sanction is necessary for grant of enanced fees.



6

I agree, but the R.L.A. may however deal with this.

11/4

12/4

R.L.A.

a fee of Rs 40 per day will be suffice

12/4

Ur. G & J. No. 6023 & 14th April 1957

F.D. Br. XI

The L.D. proposal may be accepted.

17.4.51.

A.S.(S)

20.4.51.

L. D.
25 APR 1951

U.S.(S). U.O.R. to L.D. dt. 20/25-4-51.

Sivt, S

REFERRED TO GOVERNMENT
LEGAL DEPARTMENT
File No. 8392
Sub No. 26/4/51
Branch

Legal Deptt

Submitted

The L.D. has agreed to our proposal to the grant of enhanced fee of Rs 40/- per day to the P.P. Dharwar.

Necy G.R. is submitted for sign

2/5

SS 2/5

Dy (Admn) 3/5.

Received on 24-4-51
25/4

Urgent
Please

No. 255 dated 10 August '51,
Office of the Public Prosecutor,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Sub :- Special Fees in Criminal Case No.166/49 in the Court of the Resident Magistrate, First Class, Dharwar.

Sir,

I hereby apply for Special Fees in the Criminal Case against Shri.R.N.Habib and others tried by the Resident Magistrate, F.C., Dharwar. It was one of the mosr sensational cases in this District. It was on a special motion by the Superintendent of Excise that the District Magistrate was pleased to requisition the special services of the Public Prosecutor, by his Order No. M.A.G.S.R. dated 21-1-1949.

The accused No.1 R.N.Habib and his brother accused No.2 are influential and rich traders of Hubli. Shri. R.N.Habib was an Hon. Magistrate at Hubli for some time. The two brothers were holding scores of Country Liquor Shops as Licensees at several places in the two Districts of Dharwar and Belgaum.

The accused were charged with offences under sections 43(1)a, 43(B) 1 & 2 and 45(b) & (c) of the Abkari Act and with section 406 of the Indian Penal Code.

RO AUG 1951

The offences were committed on or about the 15th. September 1947 and the charge sheet was sent on or about 23-3-1949. As many as 38 witnesses were examined for the prosecution and about 86 documents have been produced in the case. The hearing of the case occupied more than two years, with 70 days of hearing. Out of these 70 days the undersigned has attended on 54 days.

The facts of the case were many and complicated. The case involved several intricate questions of law. Senior and leading lawyers like Shri. V.C.Giriyappanavar, Shri. L.R.Durg, etc. were engaged for the defence. The arguments occupied many days and several hours. Numerous authorities were cited and discussed on either side.

The case has ended in a conviction of 6 out of the 8 accused including the two important accused Nos.1 and 2. (A copy of the judgment is attached hereto).

On the whole the case has called special exertion and labour on the part of the undersigned. It is therefore prayed that special and enhanced fees may please be sanctioned to the undersigned at the rate of Rs.200/- per day, in view of the special labour and skill involved.

Yours faithfully,

Public Prosecutor.

Submitted through the R.M.F.C., Dharwar and through the District Magistrate, Dharwar.

Assisted by the Learned Public Prosecutor Mr. Melinkeri.

The Case was of a very complicated nature, involving many intricate points of law. The Case was also of a very unusual interest owing to the skilful manner in which the Sessions Judge Mr. N.W.C.G.N.Habib conducted the Case and summing up of Law & Facts bore Circumscribing the Case. The Case being taken up unusual promptitude & disposed of in One day. I am pleased in saying that Mr. Melinkeri has shown diligence and ability in the conduct of the case. He does deserve enhanced fees as claims for by him.

R.M.F.C. Dharwar
14-8-1951

13 25 25

L.D. R.I. No. 22450 dt. 1-11-51.

Submitted.

*pp. 25-26 ante

2. This is a request from the Public Prosecutor, Dharwar for grant of enhanced fees at the rate of Rs. 200/- per day for conducting Criminal case no. 166/49 in the Court of the Resident Magistrate, F.C., Dharwar(State vs. R.N.Habib and 7 others). The accused in the case were charged under Section 406, I.P.C. and sections 43(1)(a), 43(B) 1 and 2 and 45(b) and (c) of the Abkari Act, 1878 as amended by Bombay Abkari Act of 1947. The grounds on which ~~on which~~ the request for enhanced fees is made are mentioned by the P.P. in his letter No.755 dated the 10th August 1951 at pp. 25-26 ante. From the correspondence it will be seen that the P.P. appeared in the Court of the R.M.F.C., Dharwar for 54 days.

3. The Resident Magistrate, First Class, Dharwar before whom the case was conducted states p.26 that the case was of a very complicated nature, involving many intricate points of law. The case was also of a very unusual importance looking to the status of the two accused M/s G.N.Habib and R.N.Habib. The case has taken an unusual period for being disposed off. He further states that Shri Malimathi has shown marked industry and ability in the conduct of the case. He therefore recommends enhanced fees as the Government deems fit.

4. The D.M., Dharwar states p.27 that in the circumstances stated by the P.P. and supported by the Trial Magistrate the request of the P.P. for enhanced fees in the case deserves consideration and recommends enhanced fees at the rate of Rs. 50/- per day for 54 days.

5. Ordinarily under Rule 23 of the L.O. (C. of S.) Rules, 1939 the P.P. is entitled to

to a fee of Rs. 20/- per day. In view of the nature of the case and also in view of the recommendations of the R.M.F.C., Dharwar and the D.M., Dharwar, the P.P's application for enhanced fees is for consideration. It will be necessary to obtain the sanction of F.D. if any enhanced fees are to be granted.

Submitted
7/11/57.

Submitted
7/11

D.S. (Crim) The recommendations for enhanced fees in this case are based on the following grounds:

Addl Secy

1 The case involved several intricate points of law
2 The hearing occupied a long time
3 The case was of unusual importance looking to the status of accused 102.

I have gone through the judgment carefully and am unable to find that the case involved intricate points of law. The judgment shows that nothing but a plain interpretation of the relevant sections of the I.P.C & the Abkari Act were called for. Not a single decided case of any High Court has been quoted in the judgment, showing that the interpretation was not a matter of doubt or difficulty.

The case has no doubt occupied 70 days if

hearing spread over 2 years. Having gone through the judgment + ~~considered~~ noted all the oral & documentary evidence adduced I am surprised ~~at this~~ that the case should have taken so long. I am afraid it must have proceeded in instalments.

As for the third ground, it appears that accused nos 1 and 2 are big licensees of liquor & had engaged eminent lawyers for their defence. That would not be a sufficient ground for enhanced fees.

On the whole, I am not convinced that a good case has been made out for enhanced fees

Sd/- V. Vasu
8.11.51

Addl Secy I - fra
6/11

Secretary L D.
Papers
8/11